

THE GEORGE WASHINGTON UNIVERSITY
Washington, DC

MINUTES OF A SPECIAL MEETING
OF THE FACULTY SENATE HELD ON
MARCH 25, 1994, IN LISNER HALL
ROOM 603

The meeting was called to order by Vice President French at 2:20 p.m.

Present: Vice President French, Registrar Gaglione, Brewer, Captain, Cohn, Englander, Fowler, Goulard, Gupta, Harrington, Johnston, Kirsch, Miller, Park, Pelzman, Robinson, Schiff, Salamon, and Vontress

Absent: President Trachtenberg, Parliamentarian Schechter, Boswell, Carson, Divita, East, Elgart, Friedenthal, Frieder, Holmes, Keimowitz, Mahmood, Mitchell, Seavey, Silber, Smith, and Wallace

I. ANNOUNCEMENT OF FACULTY ASSEMBLY, APRIL 6, 1994

Vice President French announced that a Faculty Assembly was scheduled for Wednesday, April 6th, at 3:30 p.m. in Lisner Auditorium. There were two major items on the agenda. One item was the preliminary presentation by Vice President Worth on the planning at this stage for the next capital campaign for the University. The second item was a report from Professor Lilien F. Robinson, Chair, Executive Committee, and discussion of an alternative appeals process for handling nonconcurrences as requested by the Board of Trustees' resolution of February 10, 1994.

II. STATUS REPORT: PRELIMINARY DISCUSSIONS BETWEEN REPRESENTATIVES OF THE ADMINISTRATION AND THE FACULTY REGARDING THE BOARD OF TRUSTEES' RESOLUTION DATED FEBRUARY 10, 1994

Professor Robinson called attention to the handouts distributed to the Senate which reflected a summary of the various appeals process proposals that have been discussed to date by the Ad Hoc Committee. These were not intended in any way, she said, to preempt the discussion of the Senate today. (Proposals attached) She explained that the usual procedure in the normal sequence of events would have first begun with a Senate discussion of this matter; however, because of the April 15th deadline imposed by the Board of Trustees in its Resolution of February 10th, it was necessary to appoint a working party to begin the process as quickly as possible. Professor Robinson said that the Ad Hoc Committee, composed of Professors Cohn, Henig, Johnston, Holmes, Deans Salamon and Friedenthal, Vice President French, and herself,

have had two meetings to begin discussions of alternatives to the present appeal process. Under the present system the Board of Trustees makes the final decision in the appeal process for administrative nonconcurrences. Under the proposed alternatives the general thrust is that a committee of full-time tenured faculty members would be established. This group would review the nonconcurrences in the context of "compelling reasons" and the decision of this committee would be final.

Professor Robinson said that the Ad Hoc Committee was trying to achieve a system which would provide an objective review of administrative nonconcurrences and one in which the faculty and the administration would have confidence. Such a system would have to assure due process and fair review.

Vice President French said he wished to note that the Ad Hoc Committee would be meeting next week and that the proposals distributed today to the Senate were in a sense "working papers" reflecting discussions of the Committee and, as such, had no other standing.

III. DISCUSSION AS REQUIRED TO DEVELOP A SENSE OF THE FACULTY WITH REGARD TO THE BOARD OF TRUSTEES' RESOLUTION OF FEBRUARY 10, 1994

Professor Park asked Vice President French if he knew of any strong feeling in the administration that any of these proposals would be unacceptable, inasmuch as the survey conducted by Vice President French indicated that the typical pattern would end with the University President or with the University Administration. Professor Park said that he thought the proposals before the Senate would give the advantage of a more neutral body in the sense that it was less likely to be shaped by some administration policy. Vice President French replied that he would not be prepared to answer Professor Park's question because the working party did not get that close to a discussion of these specific proposals in its last meeting. Even though he has read the proposals, Vice President French said that the Ad Hoc Committee has not talked them through and he has not talked to his senior colleagues in the administration. Professor Park asked Vice President French if he could offer some guidelines or priorities that the administration would like to see reflected in these proposals. Vice President French replied that the two boundaries imposed by the Board were (1) that the Board was to be removed from the process, and (2) that the process ought to terminate within the institution and that the final decision ought to be one arrived at through some shared role of the appropriate faculty representatives and the senior administration. He said that a cardinal point remaining for discussion was the relationship of the proposed panel and its decision to the President which, in turn, related to the question of how it was to be constituted.

Professor Pelzman said that the faculty have been asked to develop an alternative to the earlier administrative nonconcurrences process within a constrained set of options. The resolution of the Board excluded outside arbitration and excluded its continued involvement as the final appeals body in administrative nonconcurrences. After discussing this issue with faculty colleagues outside of the Senate, it becomes obvious that the only possibility open to the faculty in order to preserve the status-quo ante of the earlier process is a post-President review process. This point is viewed by the faculty as the bottom line, i.e., a post-President review process that is binding. This point is not debatable. What is debatable is the nature and composition of the panel which would make that final decision. For example, the panel could be composed of all faculty members within the University, some faculty members outside of the University, or both faculty and administrators. Professor Pelzman said that it might be helpful if the Senators, when addressing their respective faculties, begin the discussion along the following three parts: (1) the review of the administrative nonconcurrences must be post-President; (2) that review would be binding; and (3) the constitution of the review panel should be composed of primarily faculty members. He said that he himself favored a post-President review and a review panel composed of some outside faculty members, who would not have a relationship with the University. These faculty members would be less likely to be subjected to peer pressure or administrative pressure than a panel composed of University based faculty members.

Professor Englander pointed out that the proposals before the Senate today did not represent the exhaustive list of options that could be discussed, and Professor Robinson agreed, noting that these proposals were put forth as a way of opening up the matter for discussion by the Senate who may have other ideas to offer.

Professor Schiff raised a point of information. He asked how many times the administration from past experience might expect a panel to meet per year. Vice President French responded that over the past ten years, there were three cases that went to the Board for final disposition. Vice President French then recognized Professor Griffith and Professor Morgan, both former Chairs of the Executive Committee of the Faculty Senate.

There being no objection, the Chair gave the floor to Professor Griffith, a non-member. Professor Griffith said that during the years he was Chair of the Executive Committee there were no appeals to the Board at all involving nonconcurrences, but it seemed to him that one needed to remember that those cases were resolved with the understanding that, if they were not resolved by the Executive Committee, they would then go to the Board. Both parties, the department and the dean, had a fairly strong incentive

not to pursue the case to the Board for final disposition. Professor Griffith said he thought the existing procedure provided only a limited basis for predicting how many cases would go to the panel under the procedure being envisioned.

The floor was then given to Professor Morgan who said that, in the five years that he was Chair of the Executive Committee, his experience with nonconcurrences was exactly the same as indicated by Professor Griffith.

Professor Kirsch asked if anyone had determined the reason for the Board's objection to outside arbitration, and Vice President French replied that he thought it was based on the Board's experience in other settings. Professor Kirsch asked if the Board had any objections to having external faculty members or external administrators on the panel. Vice President French said that he thought the Board felt these matters were best discussed within the University where the dispute had arisen. Professor Robinson noted that, when she and Professor Johnston made a presentation before the Executive Committee of the Board, they suggested external arbitration to the Board, but there was no discussion of it at that time by the Board. Professor Johnston said that on the question of external arbitration, a recommendation could be made for a review panel which would include external members. Professor Pelzman said that if the Board desired to find an objective review panel, then the Board should consider having outsiders on the review panel because that would provide the ultimate objectivity. Vice President French said he thought that the Board felt these decisions should be made by persons who know the University's procedures, standards, culture, etc. Professor Johnston noted that these matters cannot be kept within the University if they go to court and in that situation there would be outside people who would not be as knowledgeable as University persons in deciding "compelling reasons" issues.

Professor Kirsch suggested that the Senate should decide if it could agree that the process should be a post-President and binding system, and once that has been decided, then the details on how the review panel would be constituted could be worked out later. Vice President French said he was not quite clear what was meant by "post-President." Professor Pelzman explained that the review panel would have to be independent of the administration and its decision would have to be final for it to be considered credible by the faculty.

Professor Park commented that the Senate was discussing general principles, but at some point it might be useful to go through the options ad seriatim in order to make some specific suggestions. Professor Englander asked what the time line was for completing this task, and Professor Robinson responded that the Ad Hoc Committee would meet on March 30th, the Faculty Assembly was

scheduled for April 6th, and the Faculty Senate's regular meeting was April 8th, at which time the Senate would be asked to vote on this matter. Professor Englander said that comments on the different proposals as suggested by Professor Park could be made at the Faculty Assembly, and Professor Robinson agreed. Professor Johnston emphasized that the important thing at this stage was not how the panel would be constituted but whether or not this panel would have the final say, and if it did not, then he was not interested in pursuing a discussion of the composition of the panel.

Professor Park said it seemed to him that what was coming out of this discussion was that potential grievants would be told that they may elect this new process only upon waiving any contractual rights they might have to take the issue to court, and he asked if that was the Ad Hoc Committee's intent. Professor Johnston replied that the Committee focused on internal arbitration in the format of a review panel that would not be "binding" in the same sense as binding arbitration.

Professor Gupta said that he thought that under the current Faculty Code if a nonconcurrency case goes to the Board, and the parties were unhappy with the decision, then the parties could still file a complaint with the Executive Committee to initiate grievance procedures. Professor Robinson explained that an individual could file a grievance if the faculty member thought that her or his nonconcurrency had been handled in an arbitrary or capricious way. She explained that these were separate matters; a nonconcurrency was based upon "compelling reasons" and a grievance was based upon violation of an individual faculty member's rights as defined by the Code. As a point of further clarification, Vice President French explained that a nonconcurrency involved a recommendation made by an academic unit and it was that recommendation that was in dispute as to whether or not the proposed promotion or tenuring met the test of merit as defined in the appropriate criteria. But a grievance under the Code was initiated by an individual, and that individual would have to allege that her or his nonconcurrency was handled in such a way that violated the faculty member's rights. Professor Griffith said he had discussed potential grievances arising out of nonconcurrences where a faculty member alleged that procedural steps in resolving the nonconcurrency violated his or her rights, but the issues were still distinct and the parties different. As to the "binding" issue, he suggested that the crucial issue for the Senate was whether or not it wanted to ask that the President be bound by the judgment of the review panel, and whether or not the President would agree to be bound, perhaps absent some specific exceptional circumstances. He said that even under the existing system final decisions of the Board of Trustees were not "binding" in the sense that it precluded anyone from going to court. Vice President French said that the point that Professor Griffith just made was one on which the working

party has focused in terms of the consideration of the relationship between the finding of the review panel and decision-making by the President.

Discussion of the various proposals followed by Professors Park, Robinson, Brewer, Griffith, Gupta, Harrington, Kirsch, Schiff, Captain, Goulard, Pelzman, and Vice President French.

Professor Park suggested that it would be helpful if a flowchart could be prepared for distribution at the Faculty Assembly that would show the sequence of steps that would occur in each of the various proposals. He thought the idea of a permanent panel was very constructive and recommended that non-chairs be appointed to it to lessen the likelihood of administrative pressure.

Professor Gupta noted that his departmental colleagues were very adamant about having a post-President review and having no outsiders involved in this process because they felt that there was sufficient expertise within the University.

Professor Englander asked if he was correct in his understanding of the discussion today that the sense of the Senate was that it wanted to have a binding, post-President review process for handling administration nonconcurrences. Vice President French indicated that Professor Englander was correct, absent certain limited or special circumstances. He said that the working party recognized that the constitution of the panel was not unrelated to the binding nature of the process.

ADJOURNMENT

Upon motion made and seconded, Vice President French adjourned the Special Meeting at 4:30 p.m.

A handwritten signature in cursive script, reading "J. Matthew Gaglione". The signature is written in dark ink and is positioned above the printed name and title.

J. Matthew Gaglione
Secretary

APPEALS PROCESS PROPOSALS

ALL FACULTY APPEALS COMMITTEE

The Committee would be selected from a panel of tenured faculty elected by their Schools

This group would hear the appeal after the case had gone to the President, rendering the final decision

THREE PERSON JOINT APPEALS COMMITTEE (ADMINISTRATION AND FACULTY)

The Department with whose recommendation there had been a nonconcurrence would select one tenured faculty or administrator (in the case of a promotion nonconcurrence, faculty member would have to be of equivalent academic rank)

The Vice President for Academic Affairs would select one person

The Vice President and the Department would agree on the third person

If they were unable to agree, the Executive Committee would select the third person

The case would come to this three-person committee after it had gone to the President

The committee's decision would be final

UNIVERSITY APPEALS PANEL

The Panel would be composed of seven tenured faculty members elected by their Schools (one from each School)

The Department and the Dean who has nonconcurred would each choose two from the panel

The two selected would meet to select a fifth member

The fifth member would serve as Chair (she/he would be from the Department's School)

There would be a provision for an outside panel to be called in if no decision could be reached and all parties agreed

The decision of the panel would be final

EXECUTIVE COMMITTEE OF THE FACULTY SENATE SERVING AS APPEALS COMMITTEE

It would serve as the final appeals committee, reviewing the cases as it presently review them but making the final decision rather than a recommendation

DISPUTE RESOLUTION COMMITTEE AS APPEALS COMMITTEE

Hearing Committee would be selected from the Dispute Resolution Committee (the latter is an existing elected committee)

This Committee would now hear nonconcurrence cases and its decision would be final

ADVANTAGES OF PROPOSED SYSTEMS

The Board is removed from the process, as requested

The groups conducting the review would be viewed as a neutral group by the faculty and thus acceptable

Faculty would be strongly inclined to select the courts if the process ended within the University with the President or Vice President for Academic Affairs

They would perceive the latter as a system as one that did not satisfactorily substitute for the Board's previous role of neutral review

The greatest appeal of these systems to the Board and Administration is that the decisions would be final and would not later permit the faculty member to resort to the courts in order to reverse a nonconcurrence which had been sustained through the University's system

March 25, 1994

DRAFT

New paragraph B.3 for procedures for the implementation of the Faculty Code.

3. Appointments and actions affecting renewal of appointments, promotion, tenure designation, and termination of service shall normally follow faculty recommendations. Departures from this standard shall be limited to those cases involving compelling reasons. Variant or nonconcurring recommendations from a Dean shall be sent by the Dean to the Executive Committee of the Faculty Senate through the Vice President for Academic Affairs. The Vice President for Academic Affairs shall transmit the Dean's decision without comment but with full documentation of the supporting reasons, such as, publications, teaching evaluations and letters of reference.

The Executive Committee may seek additional information and advice and shall make recommendations to the department or program that originated the recommendation and to the Dean. If concurrence cannot be obtained after both parties have had opportunity for reconsideration in the light of the recommendations of the Executive Committee, the recommendation of the Dean, accompanied by the recommendation of the faculty and the report of the Executive Committee of its deliberations and recommendation, shall be transmitted to the Vice President for Academic Affairs.

The Vice President for Academic Affairs shall review all pertinent materials and make a recommendation to the President with supporting reasons.

In all disputed cases, either the originating unit or the Dean may appeal the decision of the Vice President for Academic Affairs to the President.

If the decision is appealed, the President shall constitute an Ad Hoc Advisory Committee consisting of one member drawn from the elected school-wide personnel committees in each school of the University except the school in which the personnel recommendation originated. This ad hoc committee will review all pertinent materials and make a report to the President. The Ad Hoc Advisory Committee may request additional information, documentation or clarification respecting the recommendation under consideration. They shall advise the President whether the candidate has met the relevant school and/or department criteria, and whether it has identified sufficient reasons for not following the departmental or unit recommendation. The Ad Hoc Advisory Committee's report is advisory to and not binding on the President.

The President shall be provided with the full record of the case including its consideration at each stage of the process before he makes his decision. The President's decision represents final disposition of the matter.

New paragraph B.4 for procedures of the implementation of the Faculty Code.

4. Faculty recommendations for the awarding of tenure that are concurred in by the pertinent Dean or Deans and the Vice President for Academic Affairs shall be transmitted to the President. If the President concurs in those recommendations, s/he shall transmit them to the Board of Trustees with a recommendation for approval. If the President does not concur in the recommendation from the Vice President for Academic Affairs, s/he will so inform the parties involved and will constitute an ad hoc committee to review the case under the applicable procedures of paragraph B. 3. prior to making a final decision.

THE GEORGE WASHINGTON UNIVERSITY
Washington, D.C.
20052

THE FACULTY SENATE

March 14, 1994

There will be a Special Meeting of the Faculty Senate on Friday, March 25, 1994, at 3:10 p.m. in Lisner Hall 603, called by the President at the request of the Executive Committee of the Faculty Senate for the purpose of discussion of alternatives to the current final appeal process with respect to nonconcurrences. At its February 10, 1994 meeting, the Board of Trustees adopted a Resolution indicating the Board's desire "to be removed from decision-making with respect to administrative nonconcurrences with faculty personnel recommendations beyond the end of the current academic year"; its request that "the Vice President for Academic Affairs and the President are requested to work with the Faculty Senate in exploring and developing an appropriate process for handling administrative nonconcurrences with faculty personnel recommendations which would relieve trustees of participation in the process"; urging that all available alternatives be considered "except external arbitration"; and asking that the process developed jointly by the faculty and administration be received by the Board "no later than April 15, 1994." [Copy of Board of Trustees' February 10, 1994 Resolution attached.]

AGENDA

1. Call to order
2. Announcement of Faculty Assembly to be held on Wednesday, April 6, 1994, at 3:30 p.m.
3. Status Report: Preliminary discussions between representatives of the administration and the faculty regarding the Board of Trustees' Resolution of February 10, 1994 [Summary attached]
4. Discussion as required to develop a sense of the faculty with regard to the Board of Trustees' Resolution of February 10, 1994
5. Adjournment



J. Matthew Gaglione
Secretary



VICE PRESIDENT FOR ACADEMIC AFFAIRS

February 14, 1994

TO: Lilien Robinson, Chair
Executive Committee of the Faculty Senate

FROM: ^{RSF}Roderick S. French
Vice President for Academic Affairs

RE: Board Resolution

President Trachtenberg has asked me to convey to you and through you to the Faculty Senate the resolution adopted by the Board of Trustees at its meeting on February 10, 1994. Although you were present when the resolution was ratified, it might be in order for me to call attention to two particular features of the resolution.

First, in its title and in its text the Board intended to make quite clear that this action pertains only to cases of administrative nonconcurrence with faculty personnel recommendations. This action leaves entirely untouched the provision for grievances and their resolution as set forth in the Faculty Code Section X.B and Section E.

Second, the Board recognized that any appeals of nonconcurrences arising from personnel recommendations originating in the present academic year would have to be handled according to our present practices.

RSF/ssb
Enclosure

cc: President Trachtenberg

2/10/94

ATTACHMENT I (Cont'd.)

**RESOLUTION CHANGING PROCESS FOR HANDLING ADMINISTRATIVE
NONCONCURRENCES WITH FACULTY PERSONNEL RECOMMENDATIONS**

WHEREAS, it is the view of the Academic Affairs Committee that it is inappropriate for the Board of Trustees to be involved in academic decision-making that more properly belongs to the faculty and academic administrators of the University;

WHEREAS, it is the desire of the Board of Trustees to be removed from decision-making with respect to administrative nonconcurrences with faculty personnel recommendations beyond the end of the current academic year;

WHEREAS, we believe the process normally should terminate with the Vice President for Academic Affairs; and

WHEREAS, we believe the appeal of decisions beyond those of the Vice President for Academic Affairs should be forwarded to the President of the University and whatever bodies he may decide to appoint for final disposition.

NOW THEREFORE BE IT RESOLVED, that the Vice President for Academic Affairs and the President are requested to work with the Faculty Senate in exploring and developing an appropriate process for handling administrative nonconcurrences with faculty personnel recommendations which would relieve trustees of participation in the process;

FURTHER RESOLVED, that the Board urges consideration of all available alternatives except external arbitration; and

FURTHER RESOLVED, it is requested that a copy of the proposed process developed by the faculty and administration be received by the Chairman of the Board no later than April 15, 1994.

Attachment II

Summary Status Report - Preliminary Faculty/Administration Discussions In Accordance with Board of Trustees' Resolution of February 10, 1994.

1. On February 17, 1994, the Executive Committee appointed three of its members (Lilien Robinson, Dennis Holmes and Gerald Johnston) and two members of the PEAFC Committee (Victor Cohn and Jeffrey Henig) to an Ad Hoc Committee of faculty and administration representatives to hold preliminary meetings in an effort to comply with the April 15, 1994, deadline set by the Board of Trustees.
2. The administration representatives to this Ad Hoc Committee are: Roderick French (Vice President for Academic Affairs); Linda Salamon (Dean, Columbian College); Jack Friedenthal (Dean, National Law Center).
3. In preliminary discussions to date, faculty representatives have suggested the utilization of a group of GWU faculty members to serve as an appellate body to hear appeals from determinations made by the administration, to be substituted for and serve in the same role as the Board of Trustees under the present provisions of the Faculty Code. This appellate panel might be structured as an arbitration final panel (e.g., a panel of three arbitrators), or as a committee of elected University-wide faculty members; in either case, the arbitrators, panel or committee would be the final step in the process, just as the Board of Trustees fills this role under the current Faculty Code.
4. In preliminary discussions to date, the representatives of the administration have suggested the appointment or election of a University-wide Faculty committee or panel, which would, when requested, review nonconcurrency cases and render advisory opinions to the President for his consideration as part of a decision-making process that would terminate in a final decision by the President.
5. The Ad Hoc Committee of faculty and administration representatives is scheduled to meet on Wednesday, March 23rd to continue their discussions and to formulate their proposals more precisely. The latter are intended to assist in framing the Faculty Senate's discussion at its Special Meeting of March 25th.